

Docket No. 212/220

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

Halperin

Serial No.: 09/954,544

Art Unit: 3764

Filed: September 12, 2001

For: Automated Chest  
Compression Apparatus

Examiner: DeMille, D.

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- [x] Preliminary Amendment and Response to Office Action  
[4] pages
- [x] Attachment of Claims [4] pages

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Date: August 14, 2002

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PRELIMINARY AMENDMENT AND RESPONSE TO OFFICE ACTION

Commissioner of Patents & Trademarks  
Washington, D.C. 20231

Sir:

This paper is responsive to the Office Action dated March 12, 2001 in parent application 09/188,065 filed November 9, 1998.

Amendments

Claims 1 through 13 correspond to claims 41 through 53 of the parent application.

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*Theodore D. Fay III*

Date: August 14, 2002

Theodore D. Fay III, Esq.

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The final Office Action of the parent application rejected claim 1 as obvious over Meister, Artificial Respirator, U.S. Patent 2,486,667 (Nov. 1, 1949), in view of Bastyr et al., Orthopedic Brace Having A Pneumatic Pad And Associated Pump, U.S. Patent 5,520,622 (May 28, 1996). The Office Action stated that it would have been obvious to one of ordinary skill in the art to modify Meister to use fluid filled cushions as taught by Bastyr to provide a soft pad having a hardness and size that is variable.

The Office Action relied on Bastyr, an orthopedic knee brace, to teach fluid filled cushion pads. In order to rely on a reference as a basis for an obviousness rejection, the reference must either be in the field of applicant's endeavor or be reasonably pertinent to the particular problem with which the inventor was concerned. In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992). Bastyr teaches an orthopedic knee brace. The claimed invention is to a device for compressing the chest of a patient. Bastyr is non-analogous art to a chest compression device. It seems clear that there is utterly no reason for a person designing a chest compression device, to treat heart attack victims, to look at knee braces for a solution to any problem that might be encountered. Though both may referred to a medical devices, it defies common sense to expect one of ordinary skill in the art of chest compression devices would look at knee braces. Because Bastyr is non-analogous art, it is improper to rely on such for an obviousness rejection.

Even if it is fair to consider Bastyr, there is no suggestion or motivation, in the references nor in the knowledge of a person of ordinary skill in the art, to combine Meister and Bastyr as required by Graham v. John Deere. The Office Action does not suggest a motivation for combination. Further, Meister and Bastyr are complete and functional in and of themselves and therefore there is no reason to add elements from Bastyr to Meister.

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Assuming that Meister is analogous art, it provides a device for compressing the diaphragm to provide artificial respiration. There is no indication that it is capable of compression to the degree (that is, at an effective pace and depth of compression) necessary to accomplish the chest compression necessary for CPR. He adds cushions for comfort. It is counterproductive to add cushions for comfort if it interferes with compression needed to compress the chest. The success of CPR depends on the hemodynamic effect created by the device used, and that effect is impossible to predict. Thus, even if Meister might suggest trying to use cushions, it provides no indication that it would work in a CPR device.

The Office Action rejected claims 2 through 13 (claims 42 through 53 of the parent application) as obvious over Chang, Method and Apparatus for Applying High Frequency Extrathoracic Induced Breathing, Canadian Patent 1,225,889 (Aug. 25, 1987), in view of Meister, under the assertion that Chang teaches a band including a plurality of fluid receiving cells, and Meister teaches the use of cushions for comfort.

Meister's motivation for use of cushions is comfort of the patient. This is no such motivation for a CPR device, where the patient is dying of heart attack. Who cares about the patient's comfort? Current guidelines for CPR indicate that chest compression should continue even if an operator hears ribs breaking. Better to be alive with a broken rib than dead but comfortable. Thus, the comfort motivation does not apply in the art.

Additionally, both Meister and Chang call for a belt adapted to be placed about the diaphragm, as in Chang's Figure 1. The claims call for a belt "adapted to extend around the chest of the patient." Thus, the combination proposed in the Office Action will not result in the claimed combination. Additionally, there

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is no motivation to make the adaptations of Chang and Meister to meet the claim language.

Regarding the stated motivation for sealing the cushions, that it would prevent moisture from saturating the cushion, this motivation is non-existent. Saturation of an unsealed cushion might well improve a CPR device by limiting the compressibility of the cushion. Thus, preventing a wet cushion is not an existing motivation to do anything in regards to chest compression devices. In addition, Chang indicates a benefit to leaking fluid receivers, making it impossible to ascertain any benefit to adding sealed cushions to leaking fluid receiving cells, since the leaking cells would have uncertain interaction with the sealed cells.

The prior art lacks a suggestion or motivation, to combine Chang and Meister as required by Graham v. John Deere. Further, Chang and Meister are complete and functional in and of themselves and therefore there is no reason to add elements from Meister to Chang. Meister functions by drawing a belt over the diaphragm of the patient, and cushions might well enhance the comfort in this case. Chang operates with bladders, and there is no apparent need for cushions.

#### Conclusion

This response has addressed all of the Examiner's grounds for rejection. The rejections based on prior art have been traversed. Reconsideration of the rejections and allowance of the claims is requested.

Date: August 14, 2002

By:



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